
(2014) 01 KAR CK 0083

In the Karnataka High Court

Case No : Writ Appeal No. 30166 of 2013, (L-RES)

Arun Engineering Works

APPELLANT

Vs

Deputy Labour Commissioner

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C, 33C(1), 33C(2), 33C(I)

Citation : (2014) 2 AKR 586 : (2014) 3 KCCR 2737

Hon'ble Judges : N. Kumar, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : S.S. Naganand, Sr. Counsel, Mallikarjunswamy Hiremath, Advocate for the Appellant; K. Vidyavathi, A.G.A. and V.B. Hosmath, Advocate for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The management has preferred this Writ Appeal against the order passed by the learned single Judge who has declined to interfere with the order passed by the Government u/s 33C(1) of the Industrial Disputes Act, 1947. The management is a factory registered under the Factories Act and established about 45 years ago. They are engaged in the activity of machining of crank shaft. It is a job oriented activity. The factory is managed by a partnership firm. At the relevant point of time, about 300 workmen were working in various categories. The workmen of the factory were being represented by the Union called "The Arun Group of Industries, Mazdoor Sabha, Belgaum". There was a strike in the factory during the period July 2002 to October 2002. Wages were not paid. Subsequently, the management was constrained to reduce the manpower through resignation and settlement. About 286 workmen filed joint application before the Government on 8.3.2003 claiming a total amount of Rs. 88,89,303.73 as arrears of salary from June 2002 to February 2003 and bonus for the year 2001-2002. A show cause notice came to be issued to the management by the Government to show cause as to why a recovery certificate for the amount

claimed should not be issued u/s 33C(1) of the Act. The management submitted a reply strongly disputing the claim made u/s 33C(1) of the Act. But, they specifically contended that the claim u/s 33C(1) is not maintainable since no amount is determined either through settlement or award. Further, they contended that the Government cannot adjudicate disputed questions of fact and create right to the workmen. Whether the workmen were on illegal strike or not was a disputed question of fact and the authority while conducting proceedings u/s 33C(1) of the Act has no power to adjudicate the disputed questions of fact and, therefore, they sought for dismissal of the petition. However, overruling the said objections an order came to be passed on 16.6.2003 determining the amount of arrears of Rs. 78,15,496.23 in respect of 252 workmen who have signed the claim application and directed the Deputy Commissioner to recover the said amount from the management and remit to the office of the second respondent.

2. Aggrieved by the said order, the management preferred Writ Petitions before this Court in W.P. No. 34901/2003 and W.P. No. 36943/2003. During the pendency of the proceedings there was a settlement. The said settlement dated 10.9.2004 was signed between Arun Engineering Works and Arun Group of Industries Mazdoor Sabha. On 10.9.2004, accepting the amount as indicated in Annexure-A, which is a part of the settlement, all the workmen who were the parties to the settlement submitted their resignation on 10.9.2004. They have accepted the amount of gratuity also. In the settlement the workmen had agreed that neither any complaint nor any demand pertaining to monetary settlement is pending against the management. The Trade Union and the workmen agreed that they will not raise any legal disputes of any kind about their service conditions in future against the management. They also agreed for disposal of the Writ Petition and undertook to co-operate to complete the legal formalities both in the pending Writ Petitions and in Application No. 2/2004 pending before the Additional Labour Court, Hubli. Therefore, when the Writ Petition came up for hearing before the Court, it was submitted on behalf of the management that it does not survive for consideration as all the disputes between the parties is amicably settled. Counsel appearing for the workmen though did not dispute the existence of the settlement, he only contended that some of the workmen have not accepted the benefits of the settlement. This Court after recording the submission of both the sides disposed of the Writ Petition as having become infructuous, reserving liberty to the workmen who have not received the benefit of the settlement to agitate the matter.

3. It is thereafter the President of the Union filed an application dated 6.11.2007 contending that the Writ Petition filed by the management has been dismissed. Therefore, he sought for re-issue of the recovery certificate after adjusting the amount already paid by virtue of the interim order of the High Court. On receipt of the notice from the authority, the management entered its appearance and filed detailed objections contending that the application for re-issue of recovery certificate is not maintainable in the light of the observations made by this Court

in the Writ Petition. However, the authority without considering the said objections issued the recovery certificate dated 30.5.2008 to recover Rs. 40,20,268.75. Aggrieved by the said order, the management preferred a Writ Petition in W.P. No. 31165/2008. The learned single Judge was of the view in the order passed in W.P. No. 34901/2003 workmen arrayed as respondents 3 to 254 have not accepted the settlement. In fact, the terms of the settlement were not made known to this Court. The Court accepting the request of the management permitted them to withdraw the Writ Petition. In terms of the order dated 16.6.2003 Deputy Commissioner had sought for recovery certificate to recover arrears of wages of a sum of Rs. 88,15,496/-. The Deputy Commissioner has not accepted the settlement put forth by the management. The management should have arrayed the workmen as parties to the Writ Petition. The order dated 16.6.2003 which was challenged in W.P. No. 34901/2003 has not been set aside. When the said order is not set aside, the management cannot challenge the recovery certificate which was issued after rejecting the settlement pleaded by the management. Therefore, he dismissed the Writ Petition. Aggrieved by the said order, the present appeal is filed.

4. Sri. S.S. Naganand, the learned Senior counsel appearing for the management assailing the impugned order contended that, the entire proceeding is initiated u/s 33C(1) of the Act. Admittedly, there is no award or a settlement or that the amounts are due under Chapter VA and Chapter VB of the Act. Section 33C(1) proceedings is in the nature of execution proceedings and, therefore, the claim made by the workmen was not maintainable u/s 33C(1). In fact, all the employees have been paid what is legitimately due to them as per the settlement. Now, it is a representative who is prosecuting this application. The present proceedings lacks bona fides and, therefore, he submits the learned single Judge has not properly appreciated the case put forth by the management and the order passed is contrary to Section 33C(1) and, therefore, he submits it requires to be set aside.

5. Learned counsel appearing for the respondent submits that, the condition precedent for exercise of power u/s 33C(1) by the Government is a satisfaction of the amount being due to the workmen and not paid. Once the Government is satisfied it can issue a certificate. Unless the exercise of the power is shown to be perverse or capricious, the Court should not interfere with such a valid order passed. To contend that the claim put forth by the workmen is maintainable u/s 33C(1), he relies on a judgment of this Court in the case of BPL Refrigerators, Sundararaman v. Deputy Labour Commissioner reported in Laws (Kar)-2007-2-47: (2007 (3) AIR Kar R 48) and submitted the petition was not maintainable and, therefore, no case for interference is made out.

6. In the light of the aforesaid facts and the rival contentions, the point that arise for our consideration in this appeal is,

Whether the claim put forth on behalf of the workmen was maintainable u/s 33C(1) of the Act?

7. The claim put forth by the petitioners originally is produced at page No. 41 of the appeal memo. It reads as under:--

1. The Applicants have been permanent employees of the Opponent Firm which runs the factory Arun Engineering Works. The Applicants have been workmen in the factory with many years of continuous employment to the credit of each of them. The workmen are represented by A.G. o I.M.S., the only Trade Union in the factory. The Union is recognised by the Opponent management.

2. Due to alleged financial difficulties etc., the Opponent management has failed to give/pay to the Applicants wages from June/July 2002 till the date of Application. It has also failed to pay to the Applicants Bonus for the year 2001-2002. Though the Opponent management has not denied the fact of non-payment of the above dues to the Applicant workmen, it has tried to make some false and irrelevant allegations against the workmen to avoid the payment.

3. All efforts to make the Opponent management pay the workmen their dues as mentioned in detail in Annexure-B to the Application have proved unsuccessful. Hence the Applicant workmen, who have been almost starving as a consequence of the Opponent management's failure to pay the dues, have been left with no efficacious alternative than to file the present application.

4. The entire background of the case has been clearly explained in the representation dated 7.2.2003 given to the D.L.C., D.C. by the President and other office bearers of the Union.

5. In the circumstances explained above, a Recovery Certificate deserves to be issued for the recovery of the dues shown in Annexure-B u/s 33C(1), I.D. Act, 1947.

8. A perusal of the aforesaid claim statement makes it clear the grievance of the workmen is though the opponent-management has not denied the fact of non-payment of the above dues namely wages from June-July 2002 till the date of application i.e., 08.03.2003, it has tried to make some false and irrelevant allegations against the workmen to avoid the payment. Similarly, the other claim is that the management has failed to pay bonus for the years 2001-2002. Therefore, in substance the workmen were claiming wages and bonus for the period from June-July 2002 to 08.03.2003, which the management has denied as false and irrelevant basis. Therefore, the question for consideration is, whether the workmen are entitled to the wages and bonus for the said period. That is the issue between the parties. It is in this background, we have to look into Section 33C(1) as well as Section 33C(2). It reads as under:

33C Recovery of money due from an employer.-

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of 4 Chapter VA or Chapter VB, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice

to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months:

Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

9. A perusal of Section 33C makes it clear this is a provision intended to recover money due from an employer. In other words, it is a recovery proceeding. Money due from an employer should not be in dispute. If the employer does not pay the money which is due to the workmen which is not in dispute then this provision enables the workmen to approach the appropriate Government and seek for a certificate being issued so that the said amount due could be recovered as land revenue. Therefore, it is in the nature of execution proceedings. Now the condition precedent for invoking this provision by the workmen as is clear from Section 33C(1) is, money should be due to the workmen from the employer under

(a) a settlement; or

(b) an award; or

(c) under the provisions of Chapter V-A or Chapter V-B.

10. Therefore, the intention of the Legislature is very clear. The amounts due to the workmen is crystallized in the form of a settlement, award or as mentioned in Chapter V-A or V-B, there is no scope for adjudication of the claim or holding any enquiry by the Government before issuing the certificate. Therefore, in the instant case, as is clear from the said claim petition the amount claimed is not due under an award, nor it is due under a settlement and certainly it is not an amount due under Chapter VA or V-B. The amount due is arrears of salary and

bonus which the management has disputed. Therefore, first an enquiry is to be conducted, the dispute is to be adjudicated and only after an award determining the amount due to the workmen is passed, then if that amount is not paid, Section 33C(1) comes to the rescue of the employee to recover the amount. Unfortunately, the essence of this provision has not been understood by the Government before issuing a certificate at the earliest point of time. Though this contention is raised in the earlier proceedings, because of the settlement entered into between the parties, the Writ Petition came to be dismissed on the ground of the same having become infructuous. Because the workmen objected to the statement of the management that the matter is settled, liberty is reserved to them to agitate their rights in an appropriate forum. Therefore, the legality of the said order in these circumstances was not gone into. Now that a request is made setting out all the facts for revival of the certificate, again the Government without proper application of mind, without looking into the provisions of Section 33C(1) and without appreciating the contentions of the very application for revival has issued the impugned certificate. The learned single Judge proceeds on the assumption that, as the Writ Petition challenging the earlier certificate is dismissed, they are estopped from challenging the subsequent proceedings. We find it difficult to accept the said approach. Whether the earlier certificate issued by the Government or subsequent certificate issued by the Government, the Government should possess power u/s 33C(1). A mere perusal of the earlier claim petition or the petition filed subsequently for revival, would go to show that there exist a dispute between the parties, the amount due is not paid in the manner known to law and it is only a claim. For a claim, no certificate could have been issued.

11. Insofar as the judgment relied on by the learned counsel for the respondent is concerned, we have carefully gone through the entire judgment. Except saying that the petition u/s 33C(1) is maintainable, the said judgment does not interpret Section 33C(1) nor has given any reason why such a petition is maintainable. In fact, the Delhi High Court had an occasion to go into the said question in detail in the case of M/s. Colcom Plastic Ltd. and others Vs. Union of India and others, which has held as under:

34. From the aforesaid discussion, we conclude that the proceedings u/s 33C(I) are in the nature of execution proceedings providing an additional mode of speedy recovery of money due to a workman from an employer under a settlement or an award or the provisions of Chapter V-A or Chapter V-B. Section 33C(I) does not vest any power of adjudication on the appropriate Government except to the limited extent of examining the facts to find out whether objections to jurisdiction of the appropriate Government except to the limited extent of examining the facts to find out whether objections to jurisdiction of the appropriate Government have been taken by the employer simply with a view to oust the jurisdiction of the appropriate Government under the said Section and deprive the workman of money due to him. On the interpretation of Section 33C(1) of the Act and scope of power of the appropriate Government under this

Section, we summarise our conclusions as follows:-

- (i) Proceedings u/s 33C(1) of the Act are in the nature of execution proceedings.
- (ii) The appropriate Government has not been invested with powers of a Labour Court or Industrial Tribunal to hold a formal enquiry.
- (iii) In case the management raises bona fide disputes on the right of a workman to claim of money due under a settlement or an award or under the provisions of Chapter V-A or V-B, the appropriate Government has no right of adjudication of such dispute/s.
- (iv) In case of bona fide dispute about the right of a workman of the money claimed as due from the management, the workman will have to raise an industrial dispute for reference being made for adjudication by the Labour Court/ Industrial Tribunal.
- (v) The appropriate Government has, however, a limited right of examining the objection of the management to the claim of the workman, only to form a prima facie opinion whether the objection of the management is perverse, frivolous or mala fide taken with a view to deprive the workman of the money due to him.
- (vi) The appropriate Government is required to afford a reasonable opportunity complying with the principles of natural justice to the management and the workman before taking a decision u/s 33C(1) and is also required to make a speaking order giving reasons so that the aggrieved party-management or workman may seek judicial review of the decision of the appropriate Government in accordance with law.

12. Therefore, it is clear that, in a proceeding u/s 33C(1) a disputed question of fact cannot be gone into by the appropriate Government. The proceedings u/s 33C(1) are in the nature of execution proceedings, providing an additional mode of speedy recovery of money due to a workman from an employer under a settlement or an award or the provisions of Chapter V-A or V-B. The said provision does not vest any power of adjudication on the appropriate Government. The appropriate Government has a limited right of examining the objection of the management to the claim of the workmen, only to form a prima facie opinion whether the objections of the management is perverse, frivolous or mala fide taken with a view to deprive the workman of the money due to him under an award or a settlement or under the provisions of Chapter-VA or Chapter VB. In the absence of any award or settlement, application of Chapter VA or Chapter VB to the dispute in question, the Government has no power to issue a certificate without adjudicating the claim and ascertaining the amount due. Therefore, the judgment of this Court in the aforesaid BPL Refrigerators" case (2007(3) AIR Kar R 48) (supra) where strictly do not lay down any law, if it is construed laying down a law, it is not a good law. We over-rule the said judgment.

In fact, the material on record discloses that, during the pendency of the Writ

Petition, the management negotiated with the workmen and their Union arrived at a settlement and has paid amounts which according to them is legally due to them and also according to the terms of the settlement. The application filed for revival does not specify who are the persons who are not paid the money in terms of the settlement. On the contrary, the specific request is, the management should specify who are the persons to whom the amount is paid and thereafter they should pay the balance amount failing which the certificate is to be issued for the said purpose. It only shows the person who is prosecuting the matter is not aware of the persons who are paid under the settlement and certainly he is not representing the persons who are having grievance against the management. If only the workmen had the grievance and the management had not paid under the settlement they should have approached the representative and he should have prosecuted the matter on behalf of only those persons who have not been paid, in which event he would have the requisite information about the name of the workman, the amount to be paid under the settlement and the fact that he is to be paid. All the material particulars are not forthcoming. Therefore, we find some substance in the contention of the management that the present applicant is not duly authorised by the persons who are parties to the settlement. He does not represent the interest of the persons who were not paid by the management. As we are deciding the question of maintainability of the application, suffice it to say, in the facts of the case, in the light of the statutory provision, the claim made by the workmen u/s 33C(1) is not maintainable and the Government had no jurisdiction to entertain the application and issue a certificate u/s 33C(1). Therefore, the order passed by the learned single Judge and the certificate issued has to be set aside. Hence, we pass the following order:--

- (a) Writ Appeal is allowed.
- (b) The impugned order passed in the Writ Petition is hereby set aside.
- (c) We also set aside the recovery certificate issued by the first respondent.
- (d) However, we make it clear that this order would not come in the way of any of the workmen approaching the Labour Court to adjudicate their rights and enforce their claims if they chose to do so.

All the amounts deposited by the appellant-management before this Court in pursuance of the interim orders shall be paid to them forthwith. So also, all the documents which are produced by the management for the first time before this Court shall be returned to them after obtaining due acknowledgement.

All the pending applications are ordered to be filed.

Parties to bear their own costs.